

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

UNITED STATES OF AMERICA,

No. 3:15-cv-01594-LB

Petitioner,

**ORDER GRANTING PETITIONER'S  
PETITION TO ENFORCE**

v.

[Re: ECF No. 1]

GWENDOLYN ROWE,

Respondent.

**INTRODUCTION**

The government filed a petition to enforce an Internal Revenue Service ("IRS") summons against the respondent Gwendolyn Rowe. (Petition, ECF No. 1 at 1.<sup>1</sup>) The court issued an order to show cause and set the hearing for May 28, 2015. (ECF No. 4.) The petitioner appeared at the hearing and did not contest the government's petition. The court now grants<sup>2</sup> the government's petition and orders the petitioner to appear before the revenue officer in the manner described below.

**ANALYSIS**

Under 26 U.S.C. § 7602(a), the IRS is authorized to issue a summons relevant to the investigation of any taxpayer's liability. A summons may be issued for the purposes of

<sup>1</sup> Citations are to the Electronic Case File ("ECF"); pin cites are to the ECF-generated page numbers at the tops of documents.

<sup>2</sup> Both parties consented to the undersigned's jurisdiction. (ECF Nos. 6, 9.)

1 “ascertaining the correctness of any return, making a return where none has been made, determining  
2 the liability of any person for any internal revenue tax or ... collecting any such liability.” 26 U.S.C.  
3 § 7602(a); *see also Crystal v. United States*, 172 F.3d 1141, 1143 (9th Cir. 1999) (quoting 26 U.S.C.  
4 § 7602(a)). To enforce a summons, the IRS must establish a prima facie case for enforcement by  
5 showing that the summons (1) is issued for a legitimate purpose; (2) seeks information relevant to  
6 that purpose; (3) seeks information that is not already in the IRS’s possession; and (4) satisfies all of  
7 the administrative steps set forth in the Internal Revenue Code. *United States v. Powell*, 379 U.S. 48  
8 57-58 (1964). “The government’s burden is a slight one, and may be satisfied by a declaration from  
9 the investigating agent that the *Powell* requirements have been met.” *Crystal*, 172 F.3d at 1144.

10 “The burden is minimal because the statute must be read broadly in order to ensure that the  
11 enforcement powers of the IRS are not unduly restricted.” *Id.*

12 Once the government has met its burden in establishing the *Powell* elements, if the taxpayer  
13 chooses to challenge the enforcement, he or she bears a heavy burden to show an abuse of process or  
14 lack of good faith on the part of the IRS. Indeed, “[e]nforcement of a summons is generally a  
15 summary proceeding to which a taxpayer has few defenses.” *Id.* “The taxpayer must allege specific  
16 facts and evidence to support his allegations’ of bad faith or improper purpose.” *Id.*

17 While the government’s burden is not great, it is not necessarily satisfied by an agent’s mere  
18 assertion of relevance. *United States v. Goldman*, 637 F.2d 664, 667 (9th Cir.1980). Once a  
19 summons is challenged, it must be scrutinized by the court to determine whether it seeks information  
20 relevant to a legitimate investigative purpose, and the court may choose either to refuse enforcement  
21 or narrow the scope of the summons. *Id.* at 668.

22 Here, the government has met its initial burden of showing that the *Powell* elements have been  
23 satisfied through the verification of the petition by the revenue agent. *See Crystal*, 172 F.3d at 1144  
24 (finding that the special agent’s declaration satisfied the *Powell* requirements and that the  
25 government therefore “established a prima facie case to enforce the summonses”). The verified  
26 petition indicates that the IRS’s investigation is being conducted for a legitimate purpose of  
27 ascertaining the petitioner’s tax liabilities for calendar years 2005, 2008, and 2005 and for  
28 petitioner’s trust-fund penalty for the quarterly periods ending March 21, 2007, September 30, 2007,

1 March 31, 2008, June 30, 2008, September 30, 2008, December 31, 2008, and March 31, 2009.  
2 (Petition, ECF No. 1 at 2, ¶ 3.) The summons asks the petitioner to appear and bring documents and  
3 records (e.g., bank statements, checkbooks, canceled checks, saving account passbooks, and records  
4 or certificates of deposit) from July 1, 2011 to September 30, 2011 regarding assets, liabilities, or  
5 accounts held in the taxpayer's name or for the taxpayer's benefit, or in which the taxpayer has a  
6 security interest. Exh. A, ECF No. 1 at 5. The summons explains that the IRS will use the  
7 information to prepare a collection information statement. *Id.* The petition further indicates that the  
8 information is not already in the IRS's possession, that there has been no referral for criminal  
9 prosecution of this matter, and that all administrative steps required by the Internal Revenue Code  
10 for the issuance of the summons have been taken. Petition, ECF No. 1 at 2-3, ¶¶ 5, 11-12; Exh. A,  
11 ECF No. 1 at 6.

12 The petitioner did not respond to the verified petition, did not meet the burden of showing an  
13 abuse of process or lack of good faith on the part of the IRS, and did not contest the government's  
14 petition at the hearing. Under the circumstances, the court grants the government's verified petition  
15 to enforce the IRS summons.

### 16 CONCLUSION

17 The court **GRANTS** the petition to enforce the IRS summons. The petitioner Gwendolyn Rowe  
18 must appear before the IRS Revenue Officer Ava Pointer or any other designated agent on June 25,  
19 2015 at 8:30 a.m. at 1301 Clay Street, Room 1040S, Oakland, California, to provide testimony and  
20 produce the requested documents and records. (The court notes that the handwritten date on the  
21 government's proposed order handed up at the hearing had the month "June" in the date area and  
22 "25" in the time area. The court presumes that the parties meant June 25, and the court chose the  
23 time 8:30 a.m. based on the time in other cases.) This disposes of ECF No. 1.

24 **IT IS SO ORDERED.**

25 Dated: May 30, 2015



26 LAUREL BEELER  
27 United States Magistrate Judge  
28

